

**MINUTES
of the
NINTH MEETING
of the
CRIMINAL JUSTICE REFORM SUBCOMMITTEE
of the
COURTS, CORRECTIONS AND JUSTICE COMMITTEE**

**October 15, 2014
Technology Ventures Corporation Building
University of New Mexico
Albuquerque**

The ninth meeting of the Criminal Justice Reform Subcommittee of the Courts, Corrections and Justice Committee (subcommittee) was called to order by Senator Lisa A. Torracco, co-chair, on October 15, 2014 at 10:05 a.m. at the Technology Ventures Corporation Building at the University of New Mexico in Albuquerque.

Present

Rep. Antonio "Moe" Maestas, Co-Chair
Sen. Lisa A. Torracco, Co-Chair
Rep. Gail Chasey
Rep. Zachary J. Cook
Sen. Cisco McSorley
Sen. Bill B. O'Neill
Rep. Jane E. Powdrell-Culbert
Sen. Sander Rue

Absent

Guest Legislators

Sen. Jacob R. Candelaria
Sen. Daniel A. Ivey-Soto
Rep. William "Bill" R. Rehm
Rep. Sheryl Williams Stapleton

Staff

Douglas Carver, Staff Attorney, Legislative Council Service (LCS)
Caela Baker, Staff Attorney, LCS
Monica Ewing, Staff Attorney, LCS
Julio Garcia, Legislative Intern, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Wednesday, October 15

Call to Order and Introductions

Senator Torracco welcomed everyone to the meeting, and the subcommittee members introduced themselves. Senator Torracco explained that the subcommittee would spend the day establishing its legislative agenda for the 2015 legislative session.

Criminal Justice Reform — Legislative Plan for the 2015 Session

The subcommittee members discussed continuing the subcommittee's work revising the Criminal Code beyond the 2014 interim. They also considered whether the subcommittee should propose an omnibus bill or individual bills during the 2015 legislative session. The members determined that they would include only items that receive unanimous support on the subcommittee's legislative agenda. One member suggested that in its future work, the subcommittee should look at the entire Criminal Code and perform a comprehensive revision of those statutes. Another member recalled that other major statutory revisions, such as that of the Public School Code, were performed over several years' time.

Ken Fladager, the chair of the Prosecutors' Section of the State Bar of New Mexico, informed the subcommittee that prosecutors are interested in revisions to statutes addressing technology and cybercrime. He added that current statutory language limits the way child pornography is prosecuted and recommended legislation to revise the out-of-date statutes.

A member expressed concern that the state's current law allows a greater punishment for someone who views child pornography than for someone who physically harms a child. He suggested that the emphasis should be on protecting victims who are in New Mexico and on prosecuting people who engage in commerce related to child pornography.

The subcommittee discussed reclassification of certain crimes as high misdemeanors and the collateral consequences to a felony conviction. Some states have three or four levels of misdemeanors, and New Mexico has just two. A member said that reclassification of certain crimes could reduce prison costs, and another member recognized that county jails would be affected by such a reclassification. Another member added that adding a high misdemeanor level of crime could help solve some of the problems that expungement legislation is aimed at resolving. Another member emphasized the goal of imprisoning only those people who pose a safety threat and not those who simply deserve to be punished.

Tony Ortiz, director for the New Mexico Sentencing Commission, stated that fourth degree felons are often initially sentenced to probation, and they are given some leniency when they violate probation before they will be sentenced to incarceration. A member echoed Mr. Ortiz's observations and stated that sentencing for residential burglary can depend on the

jurisdiction in which the crime is committed — in some jurisdictions, a convict will serve prison time after one conviction, while in other jurisdictions, a person will be incarcerated only after several convictions.

From all of the proposals put forth by the individual members, the subcommittee decided to identify several that had the members' unanimous support and to review bill drafts for those proposals at the subcommittee's November meeting. The members listed the following items for discussion:

- support for halfway houses and transitional living facilities;
- creation of a high misdemeanor crime category;
- reclassification of certain felonies as high misdemeanors;
- noncontact fourth degree felonies;
- geriatric and medical parole;
- restrict certain inquiries into a person's status as a felon;
- criminal record expungement;
- earned meritorious deductions;
- sentencing guidance for the judiciary;
- reckless driving resulting in vehicular homicide;
- availability of high school equivalency diplomas in Corrections Department (NMCD) facilities;
- probation and parole reform;
- community corrections programs;
- eyewitness procedures;
- revenge pornography;
- probation and parole in Indian country;
- suspension of Medicaid eligibility during incarceration;
- NMCD information technology needs;
- Medicare for inmates;
- month-to-month earned meritorious deductions during probation;
- remove judicial discretion regarding eligibility for earned meritorious deductions;
- adjust penalties for second degree murder;
- revise drug-related offenses, first degree trafficking, kidnapping, aggravated battery, drug enforcement zone and forfeiture statutes;
- add mens rea requirements to crimes;
- changes to pretrial services;
- court programming for reuniting families; and
- 10 recommendations made by the Legislative Finance Committee (LFC) staff during the subcommittee's September meeting.

Several members expressed support for the LFC's recommendations, and the subcommittee considered each of the recommendations separately. The members agreed to

include nine of the 10 recommendations in the legislative agenda and to revise two of the recommendations that related to required NMCD expenditures.

Through discussion, the members determined that the following items had unanimous support among the members and would be included in the subcommittee's legislative agenda to be discussed at the next meeting.

1. A bill concerning month-to-month good time while on probation, allowing someone who has had 30 days of supervised probation without incident to have 30 days removed from the length of his or her required probation.
2. A bill creating the crime of aggravated battery with permanent injury, with a zero-year to six-year sentence.
3. A bill to address the issue of geriatric parole.
4. A bill addressing issues surrounding halfway houses and transitional living — the Halfway House and Transitional Living Act.
5. A bill reintroducing the Accuracy of Eyewitness Procedure Act (see SB 490, 2013).
6. A bill concerning revenge pornography, with the essential element of requiring permission to distribute by the subject of the photograph.
7. A bill to examine the eligibility for earned meritorious deductions.
8. A bill to create a gross misdemeanor/high misdemeanor in state statute.
9. A bill reclassifying certain crimes that are at present fourth degree felonies to gross/high misdemeanor (see no. 8).
10. A bill mandating that the NMCD make high school equivalency credential classes available.
11. A bill requiring the Human Services Department to allow for the suspension of Medicaid for incarcerated individuals.

From the list of LFC recommendations:

12. Require the NMCD to implement a valid risk and needs assessment and use the information to place inmates in appropriate prison programming and community programming upon reentry.
13. Require the NMCD to offer evidence-based (define) in-prison programming, including:

- a. adult education;
 - b. vocational education;
 - c. substance abuse treatment;
 - d. corrections industries; and
 - e. cognitive behavioral therapy.
14. Require the NMCD to spend 50 percent of its prison programming budget on evidence-based programs and services.
 15. Tie good time awards to completion (rather than simply participation) of evidence-based programs and services.
 16. Update statute to provide judges the ability to sentence inmates to NMCD prison facilities only if offenders are sentenced to one year or more after accounting for any period of the sentence being suspended or deferred and any credit for presentence confinement.
 17. Amend the geriatric and medical parole statute to require the NMCD to evaluate inmates eligible for medical and geriatric parole and submit the list to the Parole Board for consideration.
 18. Require the NMCD to spend 50 percent of its Adult Community Corrections Act services funding on evidence-based (define) programs and services within four years.
 19. Amend statutory intensive supervision requirements to require offenders to participate in community treatment services based on the results of the NMCD use of a valid risk and needs assessment.
 20. Transfer drug court funding currently in the NMCD budget to the judicial branch to continue support for the Second and Eleventh judicial districts (general appropriations act change).

Approval of Minutes

The subcommittee approved the minutes for the September meeting without objection.

Public Comment

Denise Cadena, a representative of Young Women United, asked the subcommittee to consider gender in all of its legislative efforts. She recalled that the New Mexico Women's Correctional Facility in Grants is experiencing concerns with its capacity.

Lisa Seepaul expressed the importance of transitions out of incarceration, particularly with respect to housing, public service and transportation needs.

Mr. Ortiz informed the subcommittee that, as of June 30, 2013, there were 119 inmates incarcerated in New Mexico that were 65 years old or older. Some of the inmates are still

incarcerated because of the nature of the crimes they committed, but others had no family support or nursing home into which they could be released. He added that the NMCD has expressed a need for transitional housing. Currently, 212 inmates are eligible for release but are incarcerated because of the lack of transitional housing. A member added that management, including case management, for transitional housing can be difficult, and there are very few agencies providing the services.

Mr. Fladager informed the subcommittee that the creation of a high misdemeanor could overwhelm the county jails in smaller communities. He also noted that the subcommittee should consider the impacts of a high misdemeanor on the Children's Code and juvenile proceedings.

Margarita Sanchez stated her support for revisions to the state's criminal laws. She emphasized the role of job creation on preventing crime.

Esperanza Dodge, a representative of Young Women United and a member of the New Mexico Breastfeeding Task Force, asked the subcommittee to consider gender and issues related to lactation in its legislative considerations. She reminded the subcommittee about several low-cost recommendations she made in her presentation in June that would help ensure that the criminal justice system collaborates with mothers who are breastfeeding their children.

Adjournment

There being no further business, the ninth meeting of the subcommittee for the 2014 interim was adjourned at 1:52 p.m.